Massachusetts Electric
A National Grid Company

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Counsel

April 30, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: DTE 03-98

Dear Secretary Cottrell:

I am enclosing the Massachusetts Electric Company's Reply Brief in this proceeding. Thank you very much for your time and attention to this matter.

Very truly yours,

s/ Amy Rabinowitz

Amy G. Rabinowitz

cc: William Stevens, Hearing Officer
Jody Stiefel, Hearing Officer
James Byrnes, Rates and Revenue Requirements Division
Joseph Passaggio, Rates and Revenues Requirements Division
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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of the Towns of Franklin and Swampscott, pursuant to G.L. c. 164. § 34A, for approval by the Department of Telecommunications and Energy to resolve a dispute between the Towns and Massachusetts Electric Company, with respect to the Towns' purchase of street lighting equipment.	)	D.T.E. 03-98

REPLY BRIEF OF MASSACHUSETTS ELECTRIC COMPANY

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REPLY BRIEF OF MASSACHUSETTS ELECTRIC COMPANY

Massachusetts Electric Company ("Mass. Electric" or "Company") submits this Reply Brief in response to the initial brief filed by Franklin and Swampscott (collectively "Petitioners") in this proceeding ("Petitioners' Initial Brief").

I. The Petitioners' Initial Brief does not rely on evidence presented at the hearings to back their arguments.

The Petitioners' Initial Brief, which is not signed, presents ideas as if they were facts that have been brought out on the record. The Petitioners do not cite where in the record most of their information comes from, however. Further, the Company was unable to determine where in the record the information comes from by reviewing the transcripts and exhibits.

Petitioners' Initial Brief does not comply with the Department's regulations regarding briefs. Although it is fifty pages, it does not contain a subject index, with page references, and a list of all cases cited, alphabetically arranged, with references to the pages were the citations appear, as required by 220 CMR 1.11(5). In addition, it is not contain (a) a concise statement of

the case, (b) an abstract of the evidence relied upon, with reference to the record or exhibits where evidence appears, and (c) argument and authorities, all as provided in 220 CMR 1.11(4).

The loose presentation and reinterpretation of evidence in the Petitioners' Initial Brief comes at least in part from Mr. Shortsleeve's dual role of consultant and counsel for Petitioners in their purchase of streetlights. He chose to be counsel for this proceeding in front of the Department, however, and thus, can only rely on the evidence presented by his witnesses to frame legal arguments for the Department. He cannot be a fact witness and provide evidence himself, however, as he repeatedly attempts to do in the Petitioners' Initial Brief. Several times in the Petitioners' Initial Brief, he speaks of "we" and "our." See e.g. pp. 10, 13, 16, 17, 18, 19, 20, 21, 28, 29, 30, 42, 46, 47, 49, 50. This brief does not constitute a presentation of evidence brought during the hearing.

II. Despite discussion in Petitioners' Reply Brief regarding negotiating the purchase price of the streetlights, neither Mass. Gen. Laws c. 164, §34A nor DTE 01-25 provide for a negotiated price.

Petitioners claim that "[t]hey have not been able to negotiate the purchase price." Petitioners' Initial Brief p. 1. The purchase price cannot be negotiated, however. Mass. Gen. Laws c. 164 § 34A provides that if a municipality wishes to purchase its streetlights, it must reimburse the distribution company its unamortized investment, net of any salvage value, for the streetlight plant. The Company's unamortized investment is what it is, as provided in the Company's books of account, and is not a negotiated amount. The Department has provided further guidance on how to calculate the purchase price in DTE 01-25, which as the Hearing Officer noted, is the methodology currently in place. Transcript p.279. This guidance does not create any opportunities for negotiation.

Notwithstanding Petitioners' claim in their brief, neither Town Administrator testified that he wanted to "haggle" over the purchase price. Transcript, pp. 156-157, 584-587. On the contrary, they both stated that they wished to make their decision based on the best information available. Id. The Company has provided all the information it has to the Petitioners. See Mass. Electric Initial Brief pp. 7-10. Petitioners need to decide if they intend to go forward.

Petitioners' claim that the Company used the "device of a billing credit, to meet the City of Haverhill's position on the price" (Petitioners' Initial Brief, p. 49) is preposterous. There is nothing in the record (or elsewhere for that matter) to support Petitioners' description or characterization of the Haverhill purchase. On the contrary, the record is clear that Mass. Electric did not negotiate the purchase price in Haverhill. Exhibit MEC 45, p. 22, Transcript, pp. 401, 547-548. As Mr. Maylor explained, in Haverhill there were "misallocations that *required* an adjustment." Transcript, p. 155. (Emphasis supplied)

III. The Petitioners' requests for the Department to establish generic rules are confusing and not based on the evidence in this proceeding.

Petitioners "contend that the generic rules used to establish the DTE 01-25 purchase price in Waltham, Natick, and Chelsea should also apply to this case." Petitioners' Initial Brief, p. 49. As DTE 01-25 involved Edgartown, Harwich, and Sandwich, Mass. Electric is confused as to what the Petitioners contend. Nevertheless, Mass. Electric will address each of the generic rules that Petitioners put forth in their conclusion.

Petitioners first state that the "calculation of streetlight plant value should be based on gross plant investment values that reflect the gross investment of brackets and foundations in the year of the original investment." Petitioners' Initial Brief, p. 49. As a preliminary matter, the Company notes that DTE 01-25 does not in any way whatsoever address brackets and

foundations, however.[1] Furthermore, the record is clear that Mass. Electric does not have information regarding the vintage year of original investment for brackets installed prior to 1980 and foundations installed prior to 1983. See Exhibit MEC 46, pp. 8 and 9. As discussed in Mass. Electric's Initial Brief, Mass. Electric's calculation of the purchase prices is based on all available information, and this is the most appropriate way to make the calculation. See Mass. Electric Initial Brief pp. 7-10.

Petitioners' use of the Brite-Lite report to hypothesize about brackets (Petitioners' Initial Brief, p. 17) is inappropriate and beyond the scope of the admissible use of that report. The Hearing Officer ruled that it could be used only for a "limited purpose," that is to "show what the typical repair rate might be for streetlights in general. It does not mean necessarily that there is applicability to Swampscott or Franklin." Transcript, p. 21. Furthermore, the Brite-Lite witness, Mr. Curran, has no information about Franklin and Swampscott vintages and is relying solely on his visual observation of the street lighting equipment. Transcript, pp. 33-34.

Petitioners also misconstrue the effect of cost of removal. Petitioners' Initial Brief, pp. 20-21. Net book value is comprised of many components, including retirements, because retirements are recorded against the reserve for depreciation, and cost of removal, which is subject to the same accounting treatment. The Department specifically stated in DTE 01-25 that the purchase price for streetlights should take retirements into account, to the extent they are known for a specific community, and thus the Company has. On the other hand, the Department did not address cost of removal in its DTE 01-25 methodology, and thus the Company did not included it in the purchase price it provided the Petitioners. The Company has estimated

[1] This issue was not raised in the original Petition. There is no evidence whatsoever that brackets and foundations were the subject of discussion between the parties during the several months that Petitioners reviewed the purchase price information provided by the Company. See Exhibits MEC 1 through MEC 25. In fact, the parties first discussed brackets and foundations at a technical session at the Department on January 29, 2004, once this docket was underway, but this discussion was not on the record.

Franklin's cost of removal to be over $100,000 and Swampscott's cost of removal to be over $80,000. Exhibit MEC 54, p. 9. This far exceeds the Company's estimates for depreciation for brackets and foundations, $41,810 for Swampscott and $4,988 for Franklin. Record Request DTE-1.

Second, Petitioners contend that "the calculation of streetlight plant value should be based on one common set of community specific gross plant values, which in this case based on the record in this proceeding, should be the same common set of gross plant values in the company's general ledger." Petitioners' Initial Brief, p. 50. Mass. Electric agrees with that proposition. In fact, this is what Mass. Electric has done. As the Company's witness Mr. Currie described, the Company's Asset Management System maintains the Company's gross plant investment. Exhibit MEC 46, p. 2. Mass. Electric's pricing methodology uses 100% of its current plant investment and all retirement data that is available. Exhibit MEC 46, p. 6. Despite continuing allegations in the Petitioners' Initial Brief that the Company has reconfigured its gross plant values to increase the purchase price, there is no evidence or justification whatsoever to support those allegations. On the contrary, the record is clear that in response to DTE 01-25, the Company changed the way it calculated the reserve and treated retirements. See e.g. Exhibit 54, p. 31. Petitioners' own witness disputes this unsubstantiated assertion: Swampscott's Maylor stated, "I don't have any disagreement with the gross plant investment issue." Transcript, p. 125.

Petitioners continue to cloud the analysis of the streetlight purchase price methodology with a discussion of gross plant value for tax purposes. See e.g. Petitioners' Initial Brief, pp. 9-14. The record is clear that the two methodologies are different, however. As discussed in Mass. Electric's Initial Brief, pursuant to DTE 01-25, Mass. Electric does not use a depreciation

study to determine depreciation for the purpose of calculating the streetlight purchase price. Mass. Electric's Initial Brief, pp. 6-7. It does use a depreciation study for determining net book value for its real and personal property by plant account for use in determining the basis for its tax liability, however. Transcript, p. 550. Petitioners' Initial Brief is full of irrelevant and hard to understand comments about tax vs. streetlight purchase price values. For example, on p. 14, Petitioners state that "[i]f the Company cannot state that the 1963 gross plant value for tax reasons on the Company's general ledger is equal to the 1963 gross plant value used for sale reasons, the Company cannot state that it has offered a streetlight valuation that complies with DTE 01-25, DTE 98-89, or the statute." The Petitioners fail to explain why tying data back to 1963 is relevant, why DTE 98-89 is relevant, and how DTE 01-25 speaks to tax valuation.

Third, Petitioners state that "a reasonable estimation of a carry over reserve in 1963 that is designed to approximate the historical reserve attributable to the historical depreciation on streetlight equipment" should be fifty percent. Petitioners' Initial Brief, p. 50. There is no evidence in the record at all supporting this recommendation, and the Department should reject it. Petitioners also state that this assumption should be "applied after the gross investment values have been corrected to reflect the actual vintage year of the brackets and foundations." Petitioners' Initial Brief, p. 50. Wishful thinking does not create actual vintage years of brackets and foundations.

Fourth, Petitioners call for the "application of streetlight specific depreciation rates to correctly stated gross plant values, which depreciation rates should reflect the useful life of streetlight equipment." Petitioners' Initial Brief, p. 50. Elsewhere in their Initial Brief, however, Petitioners do not contest Mass. Electric's depreciation rate post 1971. See e.g. Petitioners Initial Brief, pp. 21-32. Nor do Petitioners address this anywhere else on the record. As to depreciation

rates prior to 1971, the record provides ample evidence that the Company's assumption of a four percent rate is appropriate. See e.g. Exhibit DTE 1-4, Transcript at pp. 521-23. Mass. Electric addresses this issue in detail in its Initial Brief, pp. 10-11. Despite Petitioners' arguments to the contrary in their discussion of depreciation, the record does not support their allegations. On the contrary, Swampscott Town Administrator Andrew Maylor testified that he believed that the average age of all fixtures installed from 1917 to 1955 and then retired after 1963 is 31 ½ years. Transcript, p. 58. If this were the case, the annual depreciation rate would decrease to slightly over three percent. By his own analysis, the Company's four percent assumption is conservative.

Petitioners claim that the Company is requesting approval of the four percent depreciation rate. See e.g. Petitioners Initial Brief, pp. 23, 24, 29. This is incorrect. Petitioners brought this proceeding pursuant to Mass. Gen. Laws c. 164, § 34A to resolve their dispute with Mass. Electric's purchase price methodology. Mass. Electric has explained in great detail the methodology, assumptions, and information it used to develop the purchase price, including the use of the four percent depreciation rate prior to 1971, but Mass. Electric is not requesting Department approval of depreciation rates retrospectively. Furthermore, Petitioners' discussion of Boston Edison's depreciation rates are irrelevant (See e.g. Petitioners' Initial Brief, 31), given that depreciation rates are utility specific. Mass. Electric discusses how Boston Edison's determination of depreciation differs from its own in Mass. Electric's Initial Brief, pp. 6-7.

Finally, Petitioners claim that the "Company should be required to either accept the pre sodium / post sodium allocation proposal of the Petitioners or to develop an allocation that recognizes vintages, accounts for differences in installed cost over time, and accounts for differences in depreciation paid over time." Petitioners' Initial Brief, p. 50. As to accepting Petitioners' proposal, there is not one scintilla of evidence supporting it on the record. Mr.

Maylor could not testify to it, and instead directed questions regarding the allocation proposal to Mr. Moody. Transcript pp. 152-154. Mr. Moody testified that he was not making a recommendation regarding allocations. Transcript pp. 349-350. He stated that the Petitioners "have told me certain facts, asked me to make certain assumptions, and I have produced an analysis on that basis. And my intention is that that is the end of my involvement." Transcript, p. 350. Mr. Moody further stated that, as he understood, there were no facts that substantiated this allocation percentage, but rather the allocation was the result of the Petitioners estimating or hypothesizing on this allocation. Transcript, p. 358. Mr. Fitzgerald stated that he could not give "an informed answer" to a question regarding the proposed allocation. Transcript, p. 231. Finally, Mr. Nutting did not have a specific allocation to propose. Transcript, pp. 614-615. As to a vintage based proposal, again, wishing cannot make it so, and the Company does not have vintage based information with which it could calculate a purchase price. Exhibit MEC 47, p. 15. The Company has put forth other allocation proposals, however, in response to information request DTE 2-2, which Ms. Burns further discusses in her prefiled testimony, Exhibit MEC 47, pp. 10-16.

IV. The Company has provided all information that it has in a timely and responsive way to the Petitioners and the Department.

Petitioners state that the case has been long and time consuming, and they further state, without citation, that much of the information they sought from the Company only came out in the discovery and hearing process. Petitioners' Initial Brief, p. 50. This case has been long and time consuming, because Petitioners continually asked the same questions over and over again, apparently expecting different answers. See Exhibits MEC 1 through MEC 25. They did this

even though they acknowledge that the Company provided them with all information that it had. See Maylor testimony, Transcript p. 66, 118, 123; Nutting testimony, Transcript p.594; John Shortsleeve letter, Exhibit MEC 22, p. 2.

The Company strenuously objects to the outrageous insinuation, not supported in any way whatsoever on the record, that it has withheld information from the Petitioners. On the contrary, the record is clear that the Company has been forthright with the Petitioners, has provided them with all information when requested, and has been waiting to close the transactions for months. See e.g. Exhibits MEC 14, p. 219; MEC 18, p. 233; MEC 20, p. 240, and MEC 23, p. 250.

V. Conclusion

For the reasons set forth above and in the Company's Initial Brief, the Company respectfully requests that the Department find the Company's purchase price methodology to be consistent with DTE 01-25 and deny the Petitioners' other requests for relief.

Respectfully submitted,

MASSACHUSETTS ELECTRIC COMPANY
By its attorneys,

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Dated: April 30, 2004

Certificate of Service

I hereby certify that I have this day served a copy of the Reply Brief of Massachusetts Electric Company on the service list in this proceeding by electronic and first class mail.

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Dated: April 30, 2004